

App. No. 09/788,303

Request for continued examination under 37 CFR §1.114  
Amendment under 37 CFR §1.111**REMARKS**

Claims 3-6, 12-17, 24, 28-32, 72, 82-85, 107-108, 152, 167-252 remain pending in the application. Claims 3-5, 12, 17, 24, 28-30, 72, 82, 107, 152, 167, 214, and 230 are independent claims. Claims 17, 29, 167, 187-191, 205, 212, 213, 238, 245, and 250 have been amended. Reexamination and reconsideration of the application, as amended, are respectfully requested.

Applicants acknowledge allowance of Claims 3-6, 12-17, 24, 28-32, 72, 82-85, 107-108, 152, 167-252 in the Notice of Allowance dated 07/02/2004. In a case recently decided by the United States Court of Appeals for the Federal Circuit (CAFC), however, certain language in one of the patents at issue, similar to language originally employed in some of the claims of the instant application, has been construed in a manner differing from that intended by the Applicants. It is not clear whether the CAFC claim construction is specific to the fact patterns of the decided case, or may be applied more generally. Accordingly, the claims in question have been amended so as to ensure that the claims will be construed in the manner originally intended by the Applicants.

The recently-decide case is *Superguide Corporation v. Directv, Inc.* (CAFC 02-1561, -1562, and -1594, decided 02/12/2004). At least within the context of *Superguide*, the Court has interpreted "at least one of" followed by a conjunctive list of items in the patent in suit (US 5038211) to mean at least one of *each* item in the list. In the instant application, the Applicants intended "at least one of" followed by such a list to mean at least one item *from* the list. It is presumed that this was the interpretation of the Examiner as well. Since the claim construction of the CAFC in *Superguide* may at least raise the possibility of a narrower claim construction than that intended by the Applicants, Claims 17, 29, 167, 187-191, 205, 212, 213, 238, 245, and 250 have been amended. In Claims 17 and 29, the phrase "at least one of" has been deleted, and the conjunction "and" replaced by the conjunction --or--. In the remaining amended claims, the phrase "at least one of the first and second segments" has been replaced with --the first segment or the second segment--, which is intended to be interpreted as "the first segment, or the second segment, or both segments". In the amended claims, the conjunction "or" is to be construed inclusively (e.g., "a dog or a cat" would be interpreted as "a dog, or a cat, or both"; Bryan A. Garner, Elements of Legal Style p. 103, 2nd ed.

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2002), unless: i) it is explicitly stated otherwise, e.g., by use of "either-or", "only one of", or similar language; or ii) two or more of the listed alternatives are mutually exclusive within the context of the claim, in which case "or" would encompass only those combinations involving non-mutually-exclusive alternatives. Applicants believe that this amendment does not change the scope of the amended claims from the scope originally intended. In particular, the amendments set forth herein are not narrowing amendments, nor are the amendments made for reasons related to patentability.

In view of the above, it is submitted that Claims 3-6, 12-17, 24, 28-32, 72, 82-85, 107-108, 152, 167-252 are still in condition for allowance. Reconsideration claims is respectfully requested. Allowance of Claims 3-6, 12-17, 24, 28-32, 72, 82-85, 107-108, 152, 167-252 at an early date is earnestly solicited.

Respectfully submitted,



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